

FINDINGS AND DECISION

OF THE HEARING EXAMINER FOR THE CITY OF SEATTLE

In the Matter of the Application of

T.A. TARANTINO AND THE
PHINNEY RIDGE COMMUNITY COUNCIL

FILE NO. S-80-017

from a determination of the
Superintendent of Buildings

Introduction

The appellants, T.A. Tarantino and the Phinney Ridge Community Council, appeal the issuance of use permits for two condominium projects at 5900 and 6500 Phinney Avenue North.

The appellants exercised their right to appeal pursuant to Section 25.40 of the Zoning Ordinance (86300, as amended).

Parties to the proceeding were: Appellants, represented by Geoffrey P. Chism, Oles, Morrison, Rinker, Stanislaw and Ashbaugh, attorneys at law; Superintendent of Buildings represented by James E. Fearn, Jr., Assistant City Attorney and Applicant, represented by John T. Rassier, Inslee, Best, Chapin, Uhlman and Doezie, P.S., attorneys at law, agreed to waive a public hearing and submit the matter to the hearing examiner in writing.

For purposes of this decision, all section numbers, unless otherwise indicated, refer to the Zoning Ordinance (86300, as amended).

After due consideration of the written representations and argument, the following findings of fact and conclusions shall constitute the decision of the Hearing Examiner on this appeal.

Findings of Fact

1. Findings of Fact, Conclusions and Decisions were entered by the Superintendent of Buildings (Superintendent) on March 17, 1980, on the applications for use permits by Phinney Condominiums Limited for projects at 5901-5909 Phinney Avenue North and 6523-45 Phinney Avenue North. Notice of intention to issue use permits for both was published March 20, 1980.

2. Appellants filed an appeal of those decisions April 1, 1980.

3. The permits are for a six-story, 29-unit condominium (5900 Phinney Ridge Condominium) and a six-story, 31-unit condominium (6500 Phinney Ridge Condominium).

4. Environmental impact statements (EIS's) were prepared for each proposed project.

5. Appellants contend that the Superintendent erred in that his Conclusions No. 1 for each application is not supported by the EIS and by failing to condition the projects by limiting the heights to 35 ft.

6. In Conclusion No. 1 (for each project), the Superintendent concluded that each project is "...in general conformance with the appropriate policies in the following documents: Zoning Code, Goals and Policies for Regional Development, King Subregional Plan, Seattle Growth Policies, and the Housing Assistance Plan", but did not list specific, individual goals with which each is consistent.

7. The Superintendent stated that the projects would be inconsistent with the Comprehensive Plan, as amended by the West Woodland Neighborhood Improvement Plan, with two sub-goals of the Seattle 2000 Goals and with the current zoning.

8. Appellants' list an additional 18 goals or sub-goals of Seattle 2000 with which they contend the projects conflict, two from Seattle's Growth Policies, two from the King Subregional Plan and the Zoning Ordinance Several -- Seattle 2000, Population Densities, Sub-goal 4 and Orderly Growth Zoning, Goal E, Sub-goals 2 and 6; the King Subregional Plan; and the Zoning Ordinance -- Involve the zoning of the property or consistency with zoning.

9. The EIS's show that the projects would be largely consistent with the applicable portions of the King Subregional Plan in that they would occur in an existing urban center and would be infill development compatible with the residential character of the neighborhood although of greater density and scale.

10. Under Goals and Policies for Regional Development, the EIS's show the projects to be consistent with the Housing Diversity Goal, Neighborhood Preservation Goal and Public Service Goal A, Minimal Growth Cost.

11. The EIS's show the projects to have a mixed relation to the City Population policy of Seattle's Growth Policies in that they do not increase or maintain existing single family housing stock nor provide housing for families with children but would provide for owner-occupancy and not threaten the mixed residential character of the neighborhood. The projects are in harmony with the Regional Population and Income Level policies.

12. As for their relationship to the Housing Assistance Plan (1978) the EIS's show that the housing stock would be expanded but the effect on racial mix is neutral.

13. Additional Seattle 2000 Goals, which the projects do not enhance, not specifically cited by the Superintendent, and how they are incompatible are as follows:

(a) Community Task Force Goals - A - Sub-goal 2: Projects do not further the housing opportunities for low-income persons and may indirectly contribute to displacement of them.

(b) Diversity - Sub-goal 2: Do not address the needs of elderly, youth or groups having special needs.

(c) Diversity - Sub-goal 5: Bulk may disrupt character of neighborhood.

(d) Population Densities, Sub-goal 4: Projects are inconsistent with downzone.

(e) Orderly Growth - Goal E, Sub-goal 1: Projects inconsistent with downzone.

(f) Orderly Growth - Goal E, Sub-goal 4: An increase in density and scale relative to exist-land uses.

(g) Environmental Goals, Pollution - A and B: Increase in noise and pollution.

(h) Housing Goals: Goal C, 1, 2, 2: Contrary to NIP, causes more shadows and located adjacent to single family area.

(i) Community Goals: Goal C: Residential development would preclude business development on site.

Conclusions

1. The nature of administrative review must be determined by the ordinance authorizing it. Messer v. Board of Adjustment, 19 Wn.App. 780 (1978). Section 25.44, Ordinance 86300, as amended, provides for appeals de novo with the decisions of the Superintendent to be considered prima facie correct.

2. The Superintendent's statement that the projects are in "general conformance" with applicable policies in Goals and Policies for Regional Development, King Subregional Plan, Seattle's Growth Policies and the Housing Assistance Plan is supported by the EIS's. To have included Seattle 2000 in this listing, in light of the many sub-goals and objectives the EIS's acknowledge the projects are not consistent with, weakens the foundation for that statement. With zoning issues removed and looking at all the policies in toto the statement is not clearly wrong.

3. To have concluded that the projects were in conformance with the Zoning Code, although not stated in his conclusions, the Superintendent would have had to determine that the owner's rights under the previous zoning had vested. Policies which have as their objective changing the zoning or changing to uses consistent with the zoning would not be applicable to these projects, therefore.

4. No evidence was produced to show that the Superintendent did not understand that he had the authority to condition the projects based on their conformance with goals, objectives and policies as set forth in Section 15, Ordinance 105735. The presumption that he understood the discretion granted him by the law stands.

5. Most of the various goals and policies are very general to give some guidance to the City's planners and decision makers. The Council in adopting the various goals and policies did not intend, nor would it be possible, for every proposed development to be in harmony with all the various goals. Sections 15 and 19 do not require the Superintendent to condition projects based on broad goals. He is to exercise, where appropriate, his authority to deny or reasonably condition the permits for the projects. He may not deny the permits solely on the basis of the elements in Section 15.

6. The Superintendent is required by Section 19 to weigh the benefits of the project against its adverse impacts. The Superintendent's decision shows that he did. The Superintendent may determine what weight he will assign to the various factors. State v. Brannan, 85 Wn.2d 64 (1975). Appellants have not shown any abuse of that discretion. Although reducing the height of the proposed buildings would bring the projects into closer harmony with the goals regarding scale, the EIS's contained evidence that a reduced height would have not been economically feasible. If the number of units were to remain the same, the height has little other adverse effect. Increased shadow, by itself, could not be mitigated by conditioning on reduced height since the shadows would not fall in publicly owned parks, the only ground for mitigation under Section 19, Ordinance 105735, as amended, and Section 7, Ordinance 107678.

7. No other adverse impacts described in the EIS's are of such degree or magnitude that when combined with conflicts with some of the broad goals and policies of the city and region, the Superintendent's decision that the advantages of these projects outweigh the adverse environmental impacts is erroneous.

Decision

The appeal is DENIED and the Findings and Decision of the Superintendent of Buildings are AFFIRMED.

Entered this 15th day of May 1980.

M. Margaret Klockars
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Deputy Hearing Examiner

Notice of Right to Appeal

Pursuant to Section 20A of the SEPA Ordinance (105735, as amended) a party to the hearing before the Hearing Examiner may file an appeal with the City Council no later than the fifteenth (15th) day after the date the decision appealed from is filed with the SEPA Public Information Center. The appeal must be filed with the City Clerk. Rules have been adopted by the City Council governing the appeal procedure and should be reviewed prior to filing an appeal.

The City Council will only review issues relating to compliance with Section 19, Ordinance 105735, as amended. Section 19 relates to substantive authority to condition or deny a proposal on environmental grounds.